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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,229	01/06/2004	Purusharth Agrawal	VINC:001	3778
29395	7590	03/31/2008	EXAMINER	
H. DALE LANGLEY, JR.			CHAU, DUNG K	
THE LAW FIRM OF H. DALE LANGLEY, JR. PC				
610 WEST LYNN			ART UNIT	PAPER NUMBER
AUSTIN, TX 78703			2161	
			MAIL DATE	DELIVERY MODE
			03/31/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/752,229	AGRAWAL ET AL.	
	Examiner	Art Unit	
	DUNG K. CHAU	2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 January 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
 4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 4 and 5 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 06 January 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-2 drawn to accessing and indexing data of communication, classified in class 707, subclass 2.

Group II. Claim 3 drawn to real-time data analysis, classified in class 709, subclass 201.

Group III. Claims 4-5 drawn to real-time data analysis, classified in class 707/6.

2. The inventions are distinct, each from the other because of the following reasons: Inventions Group I, Group II and Group III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group I has separate utility such as accessing and indexing data of communication, Group II has separate utility such as real-time data analysis, and Group III has separate utility such as real-time data analysis. See MPEP § 806.05(d).

3. The inventions are distinct, each from the other because of the following reasons:

- a. These inventions have acquired a separate status in the art as shown by their different classification.
- b. The search required for one Group is not required for the other Groups

For the reasons above restriction for examination purposes as indicated is proper.

4. A telephone call was made to applicant's representative Mr. H. Dale Langley Jr. on March 12, 2008 to request an oral election to the above restriction requirement, a provisional election was made **without traverse** to prosecute the invention of group III, **claims 4-5. Claims 1-3** are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

6. Group III of this instant application has a total of 2 claims pending in the application; there are 2 independent claims and no dependent claims, all of which are ready for examination by the examiner.

Claim Rejections - 35 USC § 101

7. The following is a quotation of 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claim 4 is rejected under 35 U.S.C. 101 because it is a system claim; however, it lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” Both types of “descriptive material” are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of

technology permits the function of the descriptive material to be realized.

Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S.

patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 4-5 are rejected under 35 U.S.C. § 102(e) as being anticipated by Yildiz Patent No. 7,016,948.

As to claim 4, Yildiz teaches the invention as claimed, including a system for content extraction, comprising:

an interceptor for accessing a data of a communication as capturing data packets and frames transmitted through a corresponding wireless communication channel (col. 6, lines 7-17);

a breaker for breaking-up the data of the communication into at least one subset as detailed protocol analysis of the contents of IEEE802.11(b) headers of data packets or frames, including analyzing associated protocol layers in detail, for all stations or devices in a network (col. 3, lines 36-46; col. 6, lines 7-17) ;

an analyzer for applying heuristics to the at least one subset as an Expert Analyzer, which is a sophisticated network analysis tool that uses proprietary heuristics embedded in real-time protocol interpreters to construct a virtual model of the network being analyzed (col. 6, lines 25-33); and

a vectorizer for creating a scalar value of the at least one subset and transforming the scalar value into a vector as An Expert Detail panes 3010, 3012, 3014, and 3016, are a collection of information tables for the data selected by the other panes (Fig. 30; col. 6 line 45 – col. 7 line 11).

As per claim 5, it has similar limitation as claim 4; therefore it is rejected under the same rationale.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Documents:

US 5907836 A Sumita; Kazuo et al.

US 20030220984 A1 Jones, Paul David et al.

US 20030130855 A1 Babu, Shivnath et al.

US 20030028522 A1 Collins-Thompson, Kevyn et al.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung K. Chau whose telephone number is 571-270-1754. The examiner can normally be reached on Mon - Friday 7:30am - 5:00pm Est, Alt Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on 571-272-4080. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. W./
Primary Examiner, Art Unit 2164

/Dung K Chau/
Examiner, Art Unit 2161

March 19, 2008

/Apu M Mofiz/
Supervisory Patent Examiner, Art Unit 2161